

Senate Bill No. 527

Passed the Senate September 14, 2001

Secretary of the Senate

Passed the Assembly September 14, 2001

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 42400.4, 42801, 42810, 42821, 42822, 42823, 42824, 42840, 42841, 42842, 42843, 42860, 42870, and 43021, and to add Sections 42410, 42801.1, and 43023 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 527, Sher. Air pollution.

(1) Existing law prescribes various civil penalties that may be imposed by the State Air Resources Board for a violation of specified state board regulations relating to vehicular and nonvehicular air pollution control. Existing law also authorizes any city attorney, with the consent of the district attorney, upon the complaint of the state board, to bring an action for unfair trade practices.

This bill would authorize the state board to impose administrative penalties as an alternative to seeking civil penalties for certain violations. The bill would authorize the state board to impose an administrative penalty up to the maximum amount the state board is authorized to impose as a civil penalty for that violation. The bill would also limit the state board's authority to impose an administrative penalty to a maximum of \$10,000 per day in which there is a violation not to exceed \$100,000 per penalty assessment proceeding for any violation arising from the same conduct. The bill would also provide for administrative review under existing state board administrative hearing procedure regulations, except that this bill would require that the hearings be conducted by an administrative law judge appointed by the Office of Administrative Hearings. The bill would also provide for judicial review of an administrative hearing in conformance with existing law. The bill would also prohibit the state board from causing an action to be brought by any city attorney against any person upon whom the state board has imposed an administrative penalty.

(2) Existing law requires the Secretary of the Resources Agency to establish the California Climate Action Registry as a public benefit nonprofit corporation, governed by a prescribed board of directors, that is required to record and register voluntary



greenhouse gas emission reductions made by California entities after 1990.

This bill would define the terms, “annual emissions results,” “baseline,” “certification,” “de minimis emissions,” “emissions,” “emissions inventory,” and “material” for purposes of those provisions governing the registry.

Existing law also requires the registry to perform various functions, including, among other things, adopting standards for verifying emissions reductions, adopting a list of approved auditors that would verify emissions reductions, establishing emissions reductions goals, designing and implementing efficiency improvement plans, maintaining a record of all emissions baselines and reductions, and recognizing, publicizing, and promoting entities that participate in the registry.

This bill would revise the functions and duties of the registry, as prescribed, and would require the registry, in coordination with the State Energy Resources Conservation and Development Commission, to adopt industry-specific reporting metrics at one or more public meetings.

Existing law requires participants in the registry to report emissions baselines and annual emissions results expressed by a fraction in terms of emissions efficiency rates, as prescribed, and to adopt guidelines encouraging participants to report emissions in relation to the annual average business as usual rate of improvement in the energy efficiency of the state economy, as determined by the commission.

This bill would delete those requirements, and would require participants to report direct or indirect emissions separately, and would authorize the registry, on or after January 1, 2004, in coordination with the commission, to revise the scope of indirect emission source types that participants may be required to report, after a public workshop and review process, if the commission approves that revision at a public hearing, and makes specified determinations. The bill would specify that participants shall not be required to report emissions of any greenhouse gas that is de minimis, as defined, in quantity, when summed across all applicable sources of the participating entity.

The bill would prescribe certain requirements for the registration and certification of a participant in the registry.



Existing law requires the registry, not later than July 1, 2003, and periodically thereafter, to report to the Governor and the Legislature on the number of organizations participating in the registry, the percentage of the state's emissions represented by the participants in the registry, and the reductions in greenhouse gas emissions achieved by those participants.

This bill would additionally require the registry to report to the Governor and the Legislature on ways to make the registry more workable for participants that are consistent with the goals and intent of the registry. The bill would make various other changes with respect to the functions and obligations of the registry, as prescribed.

(3) Existing law also prescribes criminal penalties for a violation of a federally enforceable operating permit issued pursuant to specified provisions of the federal Clean Air Act or for a violation of specified laws under that act relating to stationary sources. Under existing law, the recovery of civil penalties for a violation of specified state laws relating to nonvehicular emission limitations precludes criminal prosecution for the violations under the act. Other existing law, as of January 1, 2003, makes a person who transports, or who provides a vehicle to transport, motor vehicle fuel for a motor vehicle fuel distributor who is not in compliance with specified laws, liable for a civil penalty.

This bill would correct erroneous cross-references and delete an obsolete cross-reference in those provisions.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in the enactment of this act to do all of the following:

(a) Provide the State Air Resources Board with an alternative to pursuing civil penalties through the court system by allowing the state board to pursue penalties for less significant violations through an administrative hearing process.

(b) Provide administrative penalty authority only for those categories of violations for which the state board maintains the authority to impose civil penalties.

(c) It is not the intent of the Legislature to modify the level of penalty impositions beyond historic levels.



SEC. 2. Section 42400.4 of the Health and Safety Code is amended to read:

42400.4. (a) In any district where a Title V permit program has been fully approved by the federal Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).

(b) In any district in which a Title V permit program has been fully approved by the federal Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000).

(c) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) or (b) occurs is a separate offense.

(e) This section shall not become operative in a district until the federal Environmental Protection Agency fully approves that district's Title V permit program.

(f) This section applies only to violations described in subdivisions (a) and (b) that are not otherwise subject to a fine of ten thousand dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

SEC. 3. Section 42410 is added to the Health and Safety Code, to read:

42410. (a) As an alternative to seeking civil penalties under Sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 for a violation of regulations of the state board, the state board may impose an administrative penalty, as specified in this section. Any administrative penalty imposed under this section shall be imposed as an alternative to, and not in addition to, a civil penalty



imposed pursuant to this article. No administrative penalty imposed by the state board pursuant to this section shall exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.

(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars (\$10,000) for each day in which there is a violation of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings.

(d) Nothing in this section authorizes the state board to seek penalties for categories of violations for which the state board may not recover penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into consideration all relevant circumstances, including, but not limited to, those factors specified in subdivision (b) of Section 42403.

(g) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (c), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative



penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

(h) For any violation that is within the enforcement jurisdiction of both the state board and the districts, the state board may impose an administrative penalty pursuant to this section only if the district in which the violation has occurred has not commenced an enforcement action for that violation.

(i) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.

(j) Any administrative penalty assessed pursuant to this section shall be paid to the State Treasurer for deposit in the General Fund.

(k) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.

(l) This section shall only apply to violations that occur on or after January 1, 2002.

(m) On or before January 30, 2005, the state board shall prepare and submit to the Legislature and the Governor a report summarizing the administrative penalties imposed by the state board pursuant to this section for calendar years 2002, 2003, 2004, and 2005.

SEC. 4. Section 42801 of the Health and Safety Code is amended to read:

42801. The Legislature finds and declares all of the following:

(a) It is in the best interest of the State of California, the United States of America, and the earth as a whole, to encourage voluntary actions to achieve all economically beneficial reductions of greenhouse gas emissions from California sources.

(b) Mandatory greenhouse gas emissions reductions may be imposed on California sources at some future point, and in view of this, the state has a responsibility to use its best efforts to ensure that organizations that voluntarily inventory their emissions receive appropriate consideration for changes in emissions quantities made prior to the implementation of any mandatory programs.



(c) Past initiatives in the state that took early and responsible action to reduce air pollution and ozone smog have demonstrated political, economic, and technological leadership, and have proven to benefit the state.

(d) The state's tradition of environmental leadership should be recognized through the establishment of a registry to provide documentation of greenhouse gas emissions levels voluntarily achieved by sources in the state. The registry will provide participants an opportunity to register greenhouse gas emissions information in a consistent format using publicly reviewed and adopted procedures and protocols.

(e) The state hereby commits to use its best efforts to ensure that organizations that establish greenhouse gas emissions baselines and register emissions results that are certified in accordance with this chapter receive appropriate consideration under any future international, federal, or state regulatory scheme relating to greenhouse gas emissions. The state cannot guarantee that any regulatory regime relating to greenhouse gas emissions will recognize the baselines and annual results recorded in the registry.

(f) The state hereby commits to review future international or federal programs related to greenhouse gas emissions and to make reasonable efforts to promote consistency between the state program and these programs and to reduce the reporting burden on participants, if changes to the state program are consistent with the goals and intent of Section 42810.

SEC. 5. Section 42801.1 is added to the Health and Safety Code, to read:

42801.1. For purposes of this chapter, the following terms have the following meanings:

(a) "Annual emissions results" means the participant's applicable data on the release of greenhouse gas emissions, both direct and indirect, from one particular year.

(b) "Baseline" means a datum against which to measure greenhouse gas emissions performance over time, usually annual emissions in a selected base year. For the purposes of this subdivision, the baseline shall start on or after January 1, 1990.

(c) "Certification" means the determination of whether a given participant's greenhouse gas emissions inventory (either baseline or annual result) has met a minimum quality standard and complied with an appropriate set of registry-approved procedures



and protocols for submitting emissions inventory information. The process for certification of emissions results will be specified within the procedures and protocols approved for industry-specific emissions inventory reporting, and may involve a range of options depending upon the nature of the emissions, complexity of a company's facilities and operations, or both, and the procedures deemed necessary by the registry board to validate a participant's emissions information.

(d) "De minimis emissions" means emissions that are below a certain threshold, when summed across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry for adoption a threshold emissions level for each type of greenhouse gas emission that shall be considered de minimis.

(e) "Emissions" means the release of greenhouse gases into the atmosphere.

(f) (1) "Emissions inventory" means an accounting of the amount of greenhouse gases discharged into the atmosphere. It is generally characterized by all of the following factors:

(A) The chemical or physical identity of the pollutants included.

(B) The geographic area covered.

(C) The institutional entities covered.

(D) The time period over which emissions are estimated.

(E) The types of activities that cause emissions.

(2) An emissions inventory shall include sufficient documentation and supporting data to make transparent the underlying assumptions and calculations for all of the reported results.

(g) "Greenhouse gases" includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(h) "Material" means any emission of greenhouse gas that is not de minimis.

SEC. 6. Section 42810 of the Health and Safety Code is amended to read:

42810. The purposes of the California Climate Action Registry shall be to do all of the following:



(a) Help various entities in the state to establish emissions baselines against which any future federal greenhouse gas emission reduction requirements may be applied.

(b) Encourage voluntary actions to increase energy efficiency and reduce greenhouse gas emissions.

(c) Enable participating entities to voluntarily record greenhouse gas emissions made after 1990 in a consistent format that is certified.

(d) Ensure that sources in the state receive appropriate consideration for certified emissions results under any future federal regulatory regime relating to greenhouse gas emissions.

(e) Recognize, publicize, and promote participants in the registry.

(f) Recruit broad participation in the process from all economic sectors and regions of the state.

SEC. 7. Section 42821 of the Health and Safety Code is amended to read:

42821. (a) The registry shall be governed by a seven-member board of directors, to be composed of all of the following members:

(1) The Secretary of the Resources Agency, or his or her designee.

(2) The Secretary for Environmental Protection, or his or her designee.

(3) Five public members representing business, local government, and public interest environmental organizations, to be appointed by the Governor for two-year terms, staggered so that, initially, three public members serve one-year terms and two members serve two-year terms. In the event of a vacancy, the Governor shall appoint a replacement public board member.

(b) The board of directors of the registry is responsible for ensuring that the registry fulfills the purposes established by this chapter and meets the financial, reporting, and operating requirements of its articles of incorporation. The board of directors shall appoint and supervise an executive director, who shall hire and direct staff.

(c) The board of directors shall adopt bylaws that ensure that, at each regularly scheduled meeting of the registry, there will be an opportunity for members of the public to comment on matters



being considered by the registry, as specified on the registry meeting agenda.

SEC. 8. Section 42822 of the Health and Safety Code is amended to read:

42822. (a) The procedures and protocols for monitoring, estimating, calculating, reporting, and certifying greenhouse gas emissions established by, or approved pursuant to, this chapter shall be the only procedures and protocols recognized by the state for the purposes of the registry, as described in Section 42810. These procedures shall be, to the extent practicable, consistent with the methods and practices used for the statewide inventory of greenhouse gas emissions prepared by the State Energy Resources Conservation and Development Commission, as required by Section 25730 of the Public Resources Code.

(b) The registry shall adopt a schedule of fees and, after an initial startup period, charge participants for registry services to cover the reasonable costs of its operations.

SEC. 9. Section 42823 of the Health and Safety Code is amended to read:

42823. The registry shall perform all of the following functions:

(a) Provide participants with referrals to approved providers for technical assistance and advice, upon the request of a participant, on any or all of the following:

(1) Designing programs to establish greenhouse gas emissions baselines and to monitor, estimate, calculate, report, and certify greenhouse gas emissions.

(2) Establishing emissions reduction goals based on international or federal best practices for specific industries and economic sectors.

(3) Designing and implementing organization-specific plans that improve energy efficiency or utilize renewable energy, or both, and that are capable of achieving emission reduction targets.

(b) In coordination with the State Energy Resources Conservation and Development Commission, the registry shall adopt and periodically update a list of organizations recognized by the state as qualified to provide the detailed technical assistance and advice in subdivision (a) and assist participants in identifying and selecting providers that have expertise applicable to each participant's circumstances.



(c) Adopt procedures and protocols for certification of reported baseline emissions and emissions results. When adopting procedures and protocols for the certification, the registry shall consider the availability and suitability of simplified techniques and tools.

(d) Qualify third-party organizations that have the capability to certify reported baseline emissions and emissions results, and that are capable of certifying the participant-reported results as provided in this chapter.

(e) Adopt procedures and protocols, including a uniform format for reporting emissions baselines and emissions results to facilitate their recognition in any future regulatory regime.

(f) Maintain a record of all certified greenhouse gas emissions baselines and emissions results. Separate records shall be kept for direct and indirect emissions results. The public shall have access to this record, except for any portions of a participant's emissions results that a participant may deem confidential.

(g) Encourage organizations from various sectors of the state's economy, and those from various geographic regions of the state, to report emissions, establish baselines and reduction targets, and implement efficiency improvement and renewable energy programs to achieve those targets.

(h) Recognize, publicize, and promote participants.

(i) In coordination with the State Energy Resources Conservation and Development Commission and the State Air Resources Board, adopt industry-specific reporting metrics at one or more public meetings.

SEC. 10. Section 42824 of the Health and Safety Code is amended to read:

42824. Participation in the registry is voluntary, and participants may withdraw at any time. If participants cease, and then resume participation, they will be expected to fill in any interim emissions information or set a new baseline. Any entity conducting business in the state may register its emissions results, including emissions generated outside of the state, on an entitywide basis with the registry, and may utilize the services of the registry.

SEC. 11. Section 42840 of the Health and Safety Code is amended to read:



42840. (a) Participants shall utilize the following reporting procedures to establish a greenhouse gas emissions baseline, participants shall report their certified emissions for the most recent year for which they have complete energy use and fuel consumption data as specified in this chapter. Participants that have complete energy use or fuel consumption data for earlier years that can be certified may establish their baseline as any year beginning on or after January 1, 1990. After establishing baseline emissions, participants shall report their certified emissions results in each subsequent year in order to show changes in emissions levels with respect to their baseline year. Participants may report annual emission results without establishing an emissions baseline. Participants shall also report using industry-specific metrics once the registry adopts an industry-specific metric for the industry in question.

(b) (1) Participants shall report direct emissions and indirect emissions separately. Direct emissions are those emissions from applicable sources that are under management control of a participating entity, including onsite combustion, fugitive noncombustion emissions, and vehicles owned and operated by the participant. Indirect emissions that are required to be reported by participants are those emissions embodied in net electricity and steam imports, including offsite steam generation and district heating and cooling. Participants are encouraged, but are not required, to report other indirect emissions based on guidance that is adopted by the registry.

(2) On or after January 1, 2004, the registry board, in coordination with the State Energy Resources Conservation and Development Commission, may revise the scope of indirect emission source types that are required to be reported by participants specified in paragraph (1) after a public workshop and review process conducted by the registry if all of the following requirements have been met.

(A) The State Energy Resources Conservation and Development Commission has approved that revision at a public hearing following a public workshop.

(B) Prior to approving that proposed revision, the commission determines all of the following:



(i) A reasonable and generally-accepted methodology exists that will enable participants to accurately estimate and report the emissions for the indirect source type in question.

(ii) The proposed revision will not create an unreasonable reporting burden on the participants.

(iii) The proposed revision is necessary to achieve the purposes listed in Section 42810.

(C) The registry, at any time it acts to revise the scope of indirect emission source types that are required to be reported by participants, establishes a timeframe for the phase in of the revised scope so that participants shall have at least four months before the start of the next annual reporting cycle that incorporates the revised scope.

(3) In cases of joint ownership, emissions are reported by the managing entity, unless the owners decide to report emissions on a pro rata basis.

(4) Participants shall not be required to report emissions of any greenhouse gas that is de minimis in quantity, when summed up across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry a definition of de minimis emissions that reasonably accounts for differences in the size, activities, and sources of direct and indirect baseline emissions of participants, and is consistent with the goals and intent of subdivision (f) of Section 42801.

(c) (1) All participants shall report direct and indirect carbon dioxide (CO₂) emissions that are material to their operations.

(2) The registry shall also encourage participants to monitor and report emissions of the following gases:

(A) Hydrofluorocarbons (HFCs).

(B) Methane (CH₄).

(C) Oxides of nitrogen (N₂O).

(D) Perfluorocarbons (PFCs).

(E) Sulfur hexafluoride (SF₆).

(3) The report of information specified in paragraph (2) is optional for three years after a participant joins the registry. After participating in the registry for a total of three years, participants shall report emissions required by both paragraphs (1) and (2).

(4) Emissions of all gases under this subdivision shall be reported in mass units.



(d) The basic unit of participation in the registry shall be an entity in its entirety such as a corporation or other legally constituted body, any city or county, and each state government agency. The registry shall not record emissions baselines and reductions for individual facilities or projects, except to the extent they are included in an entity's emissions reporting.

(1) Corporations may report emissions baselines and annual emissions results from subsidiaries if the parent corporation is clearly defined.

(2) Participants shall report emissions from all of their applicable sources in the state when they initially register.

(3) Participants may, and are encouraged to, at any time, register emissions from all applicable sources based in the United States, so long as this reporting meets all the other requirements established by this chapter. Those participants with emissions in other states that report California emissions only may not be able to receive equal consideration for their emissions records in future national or international regulatory regimes relating to greenhouse gas emissions. In addition, participants with operations outside of the United States are encouraged to register their total worldwide emissions baselines and annual emissions results. Within three years, the registry shall review and report to the Legislature with a recommendation on whether the registry should require, rather than encourage, participants to report all of their greenhouse gas emissions in the United States, not just California emissions.

(4) To ensure that reported emissions reflect actual emissions, participants that outsource production or services shall report emissions associated with the outsourced activity, and remove these emissions from their emissions baseline. The subcontracted entity, if it voluntarily chooses to participate in the registry shall report emissions associated with the outsourced activities it has taken over. Participants shall attest at least once each year that the entity has not outsourced any emissions, or that if it has, that all emissions associated with the outsourced activity have been reported and subtracted from the entity's baseline emissions.

(5) To prevent changes in vertical integration within corporations from leading to apparent emissions reductions when in fact no reductions have occurred, the registry shall treat mergers, acquisitions, and divestitures as follows:



(A) The emissions baselines of any merged or acquired entity shall be added together, and the registry shall treat the resulting entity as if it had been one corporation from the beginning.

(B) In divestitures, the emissions baselines of the affected corporations shall be split, with the effect that the registry shall treat them as if they had been separate corporations from the beginning. If the divested corporation is purchased by another firm, the registry shall treat that purchase as a merger with the purchasing corporation. If the divested corporation remains a separate entity after the divestiture, its registry baseline shall reflect the emissions associated with the entity's operations before the divestiture. Corporations that divest operations may allocate certified emissions results achieved prior to the divestiture among the divesting and the divested entities, and the registry shall adjust their baselines accordingly.

(C) Any adjustments for changes in vertical integration shall be verified in the annual emissions certifications required for recordation of emissions results.

(6) If a participant changes from statewide to national reporting under this program, changes to its baseline will be treated in a similar manner as changes in vertical integration as described in paragraph (5).

(7) To ensure that reported emissions accurately reflect shifts in operations to or from other states, the registry shall adopt, in consultation with the State Energy Resources Conservation and Development Commission, at a public meeting and following at least one public workshop, reporting procedures for participants that choose to report greenhouse emissions on a statewide basis that require participants to show both of the following:

(A) Changes in a participant's operations, such as a facility startup or shutdown, that result in a significant and long-term shift of greenhouse gas emissions from California to other states or from other states to California.

(B) The corresponding change in the participant's baseline.

SEC. 12. Section 42841 of the Health and Safety Code is amended to read:

42841. (a) To support the estimation, calculation, reporting, and certification of emissions in a consistent format, the registry shall adopt standardized forms that all participants shall use to calculate, report, and certify emissions, unless an alternative



format is (1) reviewed and recommended by the State Energy Resources Conservation and Development Commission and the State Air Resources Board, and (2) adopted by the registry, and deemed to be consistent with the goals and intent of this chapter. In cooperation with the State Energy Resources Conservation and Development Commission, the registry shall review commonly available emissions tracking software to determine whether existing software packages are able to generate reports for the registry.

(b) The procedures established for all of the following shall conform to the requirements of Article 6 (commencing with Section 42870):

(1) Establishing electricity and fuel usage and for calculating associated emissions.

(2) Mass-balance calculations, stack testing, or continuous emissions monitoring of greenhouse gases from onsite fuel combustion are all acceptable ways of reporting greenhouse gases from onsite fuel combustion.

(3) Estimating, calculating, reporting, and certifying noncombustion emissions of the gases listed in paragraphs (1) and (2) of subdivision (c) of Section 42840.

(4) Collecting and maintaining data and records of energy, fuel, and chemical consumption sufficient to allow contemporaneous and ex post certification of direct and indirect emissions.

SEC. 13. Section 42842 of the Health and Safety Code is amended to read:

42842. (a) Participants registering baseline emissions and emissions results in the registry shall provide certification of their methodologies and results. The registry board may, upon recommendation of the State Energy Resources Conservation and Development Commission and the state board, following a public process, adopt simplified procedures to certify emissions results as appropriate. Participants shall follow registry-approved procedures and protocols in determining emissions, and supply the quantity and quality of information necessary to allow an independent ex post certification of the emissions baseline and emissions results reported under this program.

(b) The registry shall adopt a list of approved third-party organizations recognized as competent to certify emissions results as provided in this chapter. The process for evaluating and



approving these organizations shall be developed in coordination with the State Energy Resources Conservation and Development Commission. The registry may reopen the qualification process periodically in order for new organizations to be added to the approved list.

(c) As appropriate, the registry shall refer participants to the organization on the approved list described in subdivision (b).

(d) Where required by the registry for certification, organizations approved pursuant to subdivision (b) shall do all of the following:

(1) Evaluate whether the participant has a program, consistent with registry-approved procedures and protocols, in place for preparation and submittal of the information reported under this chapter.

(2) Check, during certification, the reasonableness of the emissions information being reported for a random sample of estimates or calculations.

(3) Summarize its review in a report to the board of directors, or equivalent governing body, of the participating entity, attesting to the existence of a program that is consistent with registry-approved procedures and protocols and the reasonableness of the reported emissions results and noting any exceptions, omissions, limitations, or other qualifications to their representations.

(e) In conducting certification for a participant under this program, the approved organization shall schedule any meeting or meetings with the participant in advance at one or more representative locations and allow the participant to control property access. The meetings shall be conducted in accordance with a protocol that is agreed upon in advance by the participant and the approved organization. The approved organization shall not perform facility inspection, direct measurement, monitoring, or testing unless authorized by the participant.

(f) To ensure the integrity and constant improvement of the registry program, the State Energy Resources Conservation and Development Commission shall perform on a random basis an occasional review and evaluation of participants' emissions reporting, certifications, and the reasonableness of the emissions information being reported for analysis of estimates or calculations. The commission shall report any findings in writing



to the registry. The registry shall include a summary of these findings in the biennial report to the Governor and the Legislature required by Article 5 (commencing with Section 42860).

SEC. 14. Section 42843 of the Health and Safety Code is amended to read:

42843. Not later than July 1, 2003, and periodically thereafter, the registry shall evaluate and review the approaches to emissions reporting described in subdivision (b) of Section 42840, in light of knowledge gained from the actual practices of estimating, calculating, reporting, and certifying emissions, and, upon recommendation of the State Energy Resources Conservation and Development Commission following a public process, may modify or revise reporting requirements as appropriate to further the purposes of this chapter.

SEC. 15. Section 42860 of the Health and Safety Code is amended to read:

42860. Not later than July 1, 2003, and biennially thereafter, the registry shall report to the Governor and the Legislature on the number of organizations participating in the registry, the percentage of the state's emissions represented by the participants in the registry, the reductions in greenhouse gas emissions achieved by those participants, and ways to make the registry more workable for participants that are consistent with the goals and intent of this chapter.

SEC. 16. Section 42870 of the Health and Safety Code is amended to read:

42870. The State Energy Resources Conservation and Development Commission shall do all of the following:

(a) Develop a process to identify and qualify third-party organizations approved to provide technical assistance and advice, upon the request of a participant in any or all of the following areas:

- (1) Determining greenhouse gas emissions.
- (2) Developing industry-specific emissions reduction targets.
- (3) Developing and implementing efficiency improvement programs appropriate to various industries and economic sectors.

The process shall do all of the following:

(A) Define the minimum technical and organizational capabilities and other qualifications approved firms are required to meet.



(B) Call for applications or otherwise encourage interested organizations to submit their qualifications for review.

(C) Evaluate applicant organizations according to this list of qualification standards.

(D) Recommend, not later than six months following the first registry board meeting, specific organizations to the registry as qualified to provide the technical assistance functions of this chapter.

(E) Update the list of approved technical assistance providers periodically by doing all of the following:

(i) Reviewing the capabilities of already approved providers.

(ii) Reviewing applications of new providers.

(iii) Recommending to the registry specific organizations to be added to the approved list, and specific organizations no longer qualified to provide the technical assistance duties of this chapter.

(b) Develop or update certain emissions reporting metrics by doing all of the following:

(1) Review, in coordination with the State Air Resources Board, industry-specific greenhouse gas reporting metrics linked to or based on international or federal standards, as these become available periodically, and advise the registry of its opinion as to whether the adoption of sectoral or industry-specific metrics complement the reporting procedures.

(2) By July 1, 2003, recommend to the registry for possible adoption a procedure for defining and measuring transportation-based emissions associated with registry participants' activities, including, but not limited to, shipping of products and materials, employee commuting, and purchased air travel.

(c) Develop, not later than six months following the first registry board meeting, guidance to the registry on all of the following processes to facilitate participation in the program:

(1) Recommendations for threshold emissions of each greenhouse gas that are considered de minimis to a participant's operations.

(2) Establishing entities' electricity usage and calculating CO₂ emissions associated with that usage.

(3) Establishing entities' fuel usage and calculating CO₂ emissions associated with that usage.

(4) Determining emissions from onsite fuel combustion.



(5) Determining the noncombustion emissions of the six greenhouse gases with which the registry is concerned, as applicable.

(6) Establishing procedures and protocols to certify greenhouse gas emissions baselines and emissions results.

(7) Collecting and maintaining data and records of energy, fuel, and chemical consumption sufficient to allow ex post certification of emission results of direct and indirect emissions on an entity-wide basis.

(d) Develop, not later than six months after the first meeting of the registry board, a process for qualifying third-party organizations recognized by the State of California as competent to certify the emissions results of the types of entities that may choose to participate in this registry, by doing all of the following:

(1) Developing a list of the minimum technical and organizational capabilities and other qualification standards that approved third-party organizations shall meet. Those qualifications shall include the ability to sign an opinion letter, for which they may be held financially at risk, and certifying the participant-reported emissions results as provided in this chapter.

(2) Publicizing an applications process or otherwise encouraging interested organizations to submit their qualifications for review.

(3) Evaluating applicant organizations according to the list of qualifications described in paragraph (1).

(4) Recommending specific third-party organizations to the registry as qualified to certify participants' actual emissions results in accordance with this chapter.

(5) Periodically updating the list of approved third-party organizations by doing any of the following:

(A) Reviewing the capabilities of approved organizations.

(B) Reviewing applications of organizations seeking to become approved.

(C) Recommending to the registry specific organizations to be added to the approved list, and specific organizations no longer qualified to perform the duties of this chapter.

(e) (1) Occasionally, and on a random basis, accompany third-party organizations on scheduled visits to observe and evaluate, during any certification visit, both the following:



(A) Whether the participant has a program, consistent with registry-approved procedures and protocols, in place for the preparation and submittal of the information required under this chapter.

(B) The reasonableness of the emissions information being reported for a sample of estimates or calculations.

(2) To help the registry report to the Legislature, the State Energy Resources Conservation and Development Commission shall report, in writing, to the registry on these findings to further ensure that reported emissions accurately reflect annual emissions of greenhouse gases.

(f) Review future international or federal programs related to greenhouse gas emissions, and make reasonable efforts to promote consistency between the state program and these programs, and to reduce the reporting burden on participants.

SEC. 17. Section 43021 of the Health and Safety Code is amended to read:

43021. (a) For purposes of this section, “motor vehicle fuel distributor” means any person who (1) refines, blends, or otherwise produces motor vehicle fuel, or (2) with an ownership interest in the fuel, transports or causes the transport of motor vehicle fuel at any point between a production or import facility and a retail outlet, or sells, offers for sale, or supplies motor vehicle fuel to motor vehicle fuel retailers.

(b) Any motor vehicle fuel distributor who conducts business within the state, annually on January 1, shall inform the state board in writing of the distributor’s principal place of business, which shall be a physical address and not a post office box, and any other place of business at which company records are maintained or refining activities are conducted.

(c) The state board shall supply each complying motor vehicle fuel distributor with a certificate of compliance with this section not later than June 30. The certificate shall be effective from July 1 of the year of issuance through June 30 of the following year.

(d) All motor vehicle fuel distributors shall maintain complete records of each purchase, delivery, or supply of motor vehicle fuel for a period of not less than two years in the physical locations reported pursuant to subdivision (b) and shall not move the records to another physical location without notifying the state board of the new location. A complete record for each delivery shall consist of



not less than a copy, or the information contained therein, of the bills of lading from the refinery or bulk terminal from which the fuel is received, the delivery ticket or receipt showing the location of the fuel at the time of sale, and the invoice showing the purchaser of the fuel. All those records may be kept in physical or electronic format and are subject to inspection and duplication by the state board.

(e) Any motor vehicle fuel distributor who intentionally fails to comply with subdivision (b) or (d) is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day of noncompliance.

(f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel distributor who is not in possession of a current certificate of compliance as described in subdivision (c). Any person who transports or provides vehicles to transport motor vehicle fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each day. However, any person who transports, or provides vehicles to transport, motor vehicle fuel for a distributor who is in possession of a current certificate of compliance shall not be liable for any penalties under this subdivision unless that person has specific knowledge of noncompliance.

(g) Any retailer who knowingly sells or supplies motor vehicle fuel that was delivered to the retailer by, or on behalf of, a noncomplying motor vehicle fuel distributor is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each transaction.

(h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the state board, after both oral and written notice to cease have been delivered to the owner, manager, or attendant on duty at the facility, and upon failure to comply with that notice, is subject to the issuance of a cease and desist order by the state board and a penalty of ten thousand dollars (\$10,000) for each day of noncompliance with the cease and desist order.

(i) The state board shall annually compile and publish a complete listing of all certified wholesale petroleum distributors, and shall mail a copy to every licensed transporter of petroleum products.

(j) This section shall become operative January 1, 2003.



SEC. 18. Section 43023 is added to the Health and Safety Code, to read:

43023. (a) As an alternative to seeking civil penalties under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200), for violation of state board regulations, the state board may impose an administrative penalty, as specified in this section, for a violation of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to vehicular air pollution control except as otherwise provided in this division. No administrative penalty imposed pursuant to this section shall exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars (\$100,000) per penalty assessment proceeding for any violation arising from the same conduct. This one hundred thousand dollar (\$100,000) maximum penalty limitation does not apply in any judicial proceeding involving violations committed under this part.

(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars (\$100,000) per penalty assessment proceeding.

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings.

(d) Nothing in this section authorizes the state board to impose penalties for categories of violations for which the state board may not seek penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action



pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into consideration all relevant circumstances, including, but not limited to, those factors specified in subdivision (b) of Section 43031.

(g) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (c), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

(h) This section does not apply to any violation for which a penalty may be assessed pursuant to Chapter 1.5 (commencing with Section 43025).

(i) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.

(j) Any administrative penalty assessed pursuant to this section shall be paid to the State Treasurer for deposit in the General Fund.

(k) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.

(l) This section applies only to violations that occur on or after January 1, 2002.

(m) On or before January 1, 2005, the state board shall prepare and submit to the Legislature and the Governor a report summarizing the administrative penalties imposed by the state board pursuant to this section for calendar years 2002, 2003, 2004, and 2005.

Approved _____, 2001

Governor

